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14 Attorneys for Plaintiff and the Class

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

14 MICHAEL FLORES, individually, and  
15 on behalf of all others similarly situated,  
16 and the general public,

17 Plaintiff,

18 vs.

19 EP2, INC., a Delaware corporation;  
20 GENERAL NUTRITION  
21 CORPORATION, dba GNC, a  
22 Pennsylvania corporation; and DOES 1-  
23 10, Inclusive,

24 Defendants.

Case No. **CV09-07872 DDP (FMOx)**  
CLASS ACTION

**CLASS ACTION COMPLAINT  
FOR:**

1. FRAUD;
2. BREACH OF EXPRESS WARRANTY;
3. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT; and
4. VIOLATION OF UNFAIR COMPETITION LAWS

**DEMAND FOR JURY TRIAL**

FILED  
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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

## INTRODUCTION

Plaintiff Michael Flores, by and through his attorneys, brings this hybrid nationwide and California class action on behalf of himself, all others similarly situated and the general public ("Plaintiffs") against Defendants EP2, Inc ("EP2") and General Nutrition Corporation, dba GNC ("GNC"), collectively referred to as "Defendants." The Court has original jurisdiction over Plaintiffs' and Class Members' claims under the Class Action Fairness Act of 2005. 28 U.S.C. § 1367.

## NATURE OF THE ACTION

EP2 markets various nutritional supplements known as Anabeutrol, Andritesten, Muclegrowth, Musclepump, and Musclegtropin (collectively the "Products"). Through an extensive and comprehensive nationwide marketing campaign, EP2 claims that the Products "unleash unprecedented muscle gain, strength increase and fat loss." It also claims that the Products are "proprietary" and "cannot be duplicated or knocked-off" because certain "newly discovered compounds" are protected through their patents. EP2 claims in its advertising that these exclusive health benefits result from its proprietary strains of "new novel bioactive ingredients and extracts" which have "never before [been] seen in sports supplements." These claims are false.

For example, EP2 claims that one of its strength-inducing supplements called "Anabeutrol" triggers and stimulates muscle cell growth, cell differentiation, and fat metabolism such that, among other things, it will add **388% more muscle** and cause a **100% increase in strength** for bodybuilders.

EP2's representations are false, misleading and reasonably likely to deceive the public. EP2's nationwide advertising campaign has been massive and comprehensive to convey these deceptive messages to consumers throughout the

1 United States. Plaintiffs bring this lawsuit to enjoin these ongoing deceptions,  
2 correct the false and misleading perception it has created in the minds of  
3 consumers, and to obtain redress for those who have purchased the Products.  
4 However, the driving force behind this class action is a desire to enjoin both  
5 Defendants from making -- and profiting -- from these false and obviously  
6 misleading advertising claims.

### 7 8 THE PARTIES

9 1. Plaintiff Michael Flores is a resident of California who has purchased  
10 and used one of EP2's Products during the Class Period. Flores purchased this  
11 Product from GNC in reliance of these claims, and suffered injury in fact, and lost  
12 money as a result of the unfair competition described above.

13  
14 2. Defendant EP2 is the manufacturer of the Products, and is incorporated  
15 in the state of Delaware. EP2 is registered to do business in the State of California,  
16 and does business in the State of California.

17  
18 3. Defendant GNC is a Pennsylvania corporation with its principal place  
19 of business in Pittsburgh, Pennsylvania. It claims to be the "largest global specialty  
20 retailer" of nutritional products. GNC has thousands of stores throughout the  
21 United States, but over 264 in California alone. GNC is registered to do business in  
22 the State of California, and does business in the State of California.

23  
24 4. Plaintiffs do not know the true names or capacities of the persons or  
25 entities sued herein as DOES 1 to 10, inclusive, and therefore sues such defendants  
26 by such fictitious names. Plaintiffs are informed and believes and thereon alleges  
27 that each of the DOE defendants is in some manner legally responsible for the  
28 damages suffered by Plaintiff and the members of the class as alleged herein. At all

1 times relevant to this Complaint, Defendants, including the fictitiously named  
2 defendants, were the servants, employees, joint employers, integrated employers,  
3 alter egos, successors-in-interest, subsidiaries, affiliated companies or corporations,  
4 and joint venturers of the other Defendants, and were, as such, acting within the  
5 course, scope and authority of each other Defendant. Furthermore, each of the  
6 Defendants, including the DOE defendants, acted in concert with, and with the  
7 consent of, each of other Defendants, and that each of the Defendants, and that each  
8 of the Defendants ratified or agreed to accept the benefit of the conduct of each of  
9 the Defendants. Plaintiff will set forth the true names and capacities of these  
10 defendants when they have been ascertained, as may be necessary.

#### 11 12 JURISDICTION AND VENUE

13 5. This Court has original jurisdiction pursuant to 28 U.S.C.  
14 § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds  
15 the sum or value of \$5,000,000.00 and is a class action in which more than 100  
16 members of the Class of Plaintiffs are citizens of states different from Defendants.  
17 Further, greater than two-thirds of the Class members reside in states other than the  
18 states in which Defendants are citizens.

19  
20 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that  
21 many of the acts and transactions giving rise to this action occurred in this district  
22 and because Defendants: (a) are authorized to conduct business in this district and  
23 has intentionally availed itself of the laws and markets within this district though  
24 the promotion, marketing, distribution and sale of its products in this district; (b) do  
25 substantial business in this district; and (c) are subject to personal jurisdiction in  
26 this district. Plaintiff has filed concurrently herewith the declaration of venue  
27 required by Civil Code Section 1780(d) for the Consumer Legal Remedies Act  
28 claims. (Exhibit A.)

FACTUAL ALLEGATIONS

7. EP2 claims that its Products contain “botanically-active” ingredients that are subject to the “highest level of assay analysis and supported by toxicology, pre-clinical and clinical research.” Indeed, it goes on to claim that “every ingredient lot produced is tested for purity and potency ensuring consistent quality every time.” And that “EP2 employs a team of experienced researcher (sic) and scientific professionals to develop specialized protocols for the clinical evaluation of [all of their] products.” EP2 claims that its products “are the most exclusive and scientifically-evaluated products ever produced.” (Exhibit B.) The misleading and deceptive claims continue for all of their Products.

8. For example, Anabeutrol is a supplement manufactured by Defendant EP2. EP2 promotes and markets Anabeutrol as stimulating muscle cell growth, cell differentiation and fat metabolism through its “patent-pending ingredient TORABOLIC.” Specifically, EP2 claims that through its ingredients Anabeutrol “works to increase the power of [the purchaser’s] oxidative muscle, forcing an increase in strength,” and “triggers the genetic signal controlling fat breakdown, leading to smaller fat cells and an increase in fat burning.” In this connection, EP2 claims:

- (a) Anabeutrol is “[s]cientifically proven to help [the purchaser] lose [fat] and build muscle;”
- (b) Users of Anabeutrol will “[l]ose up to 6X [times] more fat in only 8 weeks;”
- (c) Users of Anabeutrol will “[a]dd 388% more muscle;”

(d) Users of Anabebutrol will realize a “100% increase in strength,”  
and

(e) Anabebutrol is “[c]linically proven.” (Exhibit C.)

9. GNC markets Anabebutrol at its retail outlets in California, including at its retail outlets in this County. GNC affirmatively markets the false efficacy claims of EP2’s Products, including Anabebutrol. In fact, and somewhat ironically, GNC claims that it “sets the standard” in the nutritional supplement industry by “demanding truth in labeling, ingredient safety and product potency” in all of the products that it sells. GNC goes on to claim that it “takes pride in [its] rigorous approach to ensuring quality.” (Exhibit D.)

10. Defendants’ claims for Anabebutrol are false and misleading. Specifically, contrary to Defendants’ claims:

(a) Anabebutrol does not cause the loss of fat that  
Defendants claim;

(b) Anabebutrol does not cause the increase in strength Defendants  
claim; and

(c) Anabebutrol’s results have not been “clinically proven.”

11. EP2 at all times knew that Anabebutrol did not have the properties claimed for it, and that it was defective as set forth above, but nevertheless manufactured and marketed the product as set forth above. Additionally, GNC is aware of the nature of the claims made for the product and of the sheer falsity of



1 those claims, but it nevertheless promotes and sell the product to get high-margin,  
2 profitable sales. Indeed, GNC has received complaints from consumers concerning  
3 Anabebutrol, and knew that the product was defective and did not function as  
4 advertised, but nevertheless continued to sell the product.

5  
6 12. Through its massive campaign, EP2 has conveyed one message: that it  
7 (and no other) maintains proprietary technology and products that enable  
8 consumers to add an enormous amount of muscle and decrease fat at alarming rates.  
9 Each person who has purchased the Products has been exposed to EP2's misleading  
10 advertising message multiple times.

11  
12 13. As a result of the misleading message, Plaintiffs have suffered  
13 significant injury and damage because they purchased a product based on false  
14 advertising and because the product has not worked as advertised.

15  
16 14. Defendants sell their Products for approximately \$60.00 per package  
17 based on the preceding false claims. As a result, Defendants have wrongfully made  
18 tens of millions of dollars in profits during the Class Period.

19  
20 **CLASS ACTION ALLEGATIONS**

21  
22 15. Plaintiffs bring this lawsuit on behalf of the proposed Class Members  
23 under Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure. Specifically,  
24 Plaintiffs bring a nationwide Rule 23(b)(2) fraud class for injunctive relief; and a  
25 California Rule 23(b)(3) class for the remaining counts. The proposed nationwide  
26 23(b)(2) Class consists of:

27  
28 ///

1           All persons who purchased in the United States  
2           Andritesten, Anabebutrol, Musclegrowth, Musclepump  
3           or Musclegtropin for personal use (the "Class").  
4

5           Plaintiffs request a subclass: All persons who purchased  
6           in California Andritesten, Anabebutrol, Musclegrowth,  
7           Musclepump or Musclegtropin for personal use at any  
8           time during the four years preceding the filing of this  
9           Complaint (the "Sub-Class").  
10

11           16. Excluded from the Classes are governmental entities, Defendants, any  
12           entity in which defendants have a controlling interest, and Defendants' officers,  
13           directors, affiliates, legal representatives, employees, co-conspirators, successors,  
14           subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or  
15           judicial officer presiding over this matter and the members of their immediate  
16           families and judicial staff.  
17

18           17. **Numerosity:** The proposed Class and Sub-Class comprises many tens  
19           of thousands of consumers throughout California and the United States, and,  
20           therefore, is so numerous that individual joinder of all its members is impracticable.  
21           While the exact number and identities of the Class Members are unknown at this  
22           time, such information can be ascertained through appropriate investigation and  
23           discovery. The disposition of the claims of the Class members in a single class  
24           action will provide substantial benefits to all parties and to the Court.  
25

26           ///

27           ///

28           ///



1           18.   **Common Questions of Law and Fact:** There are questions of law  
2 and fact common to the Class and Sub-Class. The common questions include:

- 3
- 4           a.   Whether EP2's Products increases bodybuilding strength as  
5           Defendants claim;
- 6
- 7           b.   Whether the Products causes fat loss as Defendants claim;
- 8
- 9           c.   Whether Defendants' have adequate substantiation for their  
10           advertising claims prior to making them;
- 11
- 12           d.   Whether Defendants falsely represented that their Products have  
13           characteristics, ingredients, uses, benefits, or quantities that it  
14           does not have;
- 15
- 16           e.   Whether Defendants falsely represented that their Products are  
17           of a particular standard, quality, or grade;
- 18
- 19           f.   Whether Defendants fraudulently induced customers to purchase  
20           their Products;
- 21
- 22           g.   Whether Defendants labeled their Products in a way that is  
23           misleading, or likely to mislead, in a material respect;
- 24
- 25           h.   Whether Defendants continued to sell their Products after  
26           knowing the preceding facts; and

27

28   ///

- 1           i.     Whether the Class and Sub-Class members are entitled to  
2                declaratory and injunctive relief.

3  
4           19.   **Typicality:** Plaintiff Flores' claims are typical of the claims of the  
5   members of the Class and Sub-Class. Plaintiff and all members of the Class and  
6   Sub-Class have been similarly affected by Defendants' common course of conduct  
7   since they all were subject to the common advertising campaign and reasonably  
8   relied on Defendants' representations (and are presumed to have relied upon the  
9   material omissions) concerning their Products, and, in fact, purchased the product  
10   based on those representations.

11  
12          20.   **Adequacy of Representation:** Plaintiff will fairly and adequately  
13   represent and protect the interests of the Class and Sub-Class. Plaintiff has retained  
14   counsel with substantial experience in handling complex class action litigation.  
15   Plaintiff and his counsel are committed to vigorously prosecuting this action on  
16   behalf of the Class and Sub-Class and have the financial resources to do so.

17  
18          21.   **Superiority of Class Action:** Plaintiff and the members of the Class  
19   and Sub-Class suffered, and will continue to suffer, harm as a result of Defendants'  
20   unlawful and wrongful conduct. A class action is superior to other available  
21   methods for the fair and efficient adjudication of the present controversy.  
22   Individual joinder of all members of the class is impracticable. Even if individual  
23   class members had the resources to pursue individual litigation, it would be unduly  
24   burdensome to the courts in which the individual litigation would proceed.  
25   Individual litigation magnifies the delay and expense to all parties in the court  
26   system of resolving the controversies engendered by Defendants' common course  
27   of conduct. The class action device allows a single court to provide the benefits of  
28   unitary adjudication, judicial economy, and the fair and efficient handling of all

1 class members' claims in a single forum. The conduct of this action as a class  
2 action conserves the resources of the parties and of the judicial system and protects  
3 the rights of the class members. Furthermore, for many, if not most, a class action  
4 is the only feasible mechanism that allows an opportunity for legal redress and  
5 justice.

6  
7 22. Adjudication of individual Class Members' claims with respect to the  
8 Defendants would, as a practical matter, be dispositive of the interests of other  
9 members not parties to the adjudication, and could substantially impair or impede  
10 the ability of other class members to protect their interests.

11  
12 23. Unless a class is certified, Defendants will retain monies received as a  
13 result of their conduct that was taken from tens of thousands of consumers  
14 throughout the United States. Unless a classwide injunction is issued, Defendants  
15 will continue to commit the violations alleged, and the members of the Class, Sub-  
16 Class, and the general public will continue to be misled.

17  
18 24. Defendants have acted and refused to act on grounds generally  
19 applicable to the Class and Sub-Class, making appropriate final injunctive relief  
20 with respect to the Class and Sub-Class -- as a whole.

21  
22 **COUNT ONE**

23 **FRAUD**

24 **(Nationwide for Injunctive Relief Only)**

25  
26 25. Plaintiffs incorporate by this reference the proceeding allegations as if  
27 fully set forth herein and, to the extent necessary, plead this cause of action in the  
28 alternative.

1           26. As alleged herein, Plaintiffs allege that Defendants have made at least  
2 the following uniform material misrepresentations to Plaintiffs and the Class:

- 3
- 4           a. Defendant EP2 claims that it has developed “proprietary  
5 technology” that isolates, purifies and stabilizes  
6 pharmaceutically active components from biotonical sources for  
7 the sport nutrition market. The result, Defendant EP2 claims, is  
8 the discovery of “new, novel bioactive ingredients” and extracts  
9 “never before seen in sports supplements.” These statements, in  
10 fact, are untrue;
- 11
- 12           b. Defendant EP2 claims that it develops its performance  
13 supplements from “unique proprietary patent pending bioactive  
14 compounds with clinically researched results” when, in fact,  
15 Defendant possesses no such rights.
- 16
- 17           c. Defendant EP2 claims that its products are the “most exclusive  
18 and scientifically evaluated products ever produced” when, in  
19 fact, this is not true;
- 20
- 21           d. Defendant EP2 claims that its exclusive patent pending drug,  
22 Anabeutrol, “adds 388% more muscle” and results in “100%  
23 increase in strength” when, in fact, it does not; and
- 24
- 25           e. Defendant GNC affirmatively advanced and promoted the  
26 uniform misrepresentations regarding Defendant EP2’s products  
27 including the ethicacy claims about Anabeutrol with knowledge  
28 of the falsity of those claims.

1           27. Defendants acted fraudulently and deceitfully with knowledge that  
2 Plaintiffs and the Class would rely on their actions and omissions. Defendants  
3 made the material representations and/or concealed material facts to induce the  
4 Plaintiff and the Class to act in reliance on the misrepresentations and statements.

5  
6           28. In purchasing the Defendants' products, Plaintiff and the Class  
7 Members relied on the representations of the Defendants and had no reason to  
8 doubt or dispute those representations. Indeed, due to the uniformity of the  
9 representations to all Class Members, Plaintiff and the Class at all times are  
10 presumed to have reasonably and justifiably relied both directly and indirectly on  
11 the actions and representations of the Defendants.

12  
13           29. As a direct and proximate result of Defendants' fraud, Plaintiff and the  
14 Class have suffered actual damages in an amount not presently known, but has  
15 acted on grounds applicable to all purchasers of all relevant products.

16  
17           30. Pursuant to Rule 23(b)(2), the Defendants have adopted a pattern and  
18 policy that is likely to be the same as to all Class Members. The Defendants'  
19 misrepresentations on the bottle labels and through advertising are applicable to the  
20 Class Members who are all purchasers of the product.

21  
22           31. The driving force behind this class action is a desire to enjoin the  
23 Defendants' false and misleading advertising. Given that it is unlikely that any  
24 named Plaintiff or Class Member will recover more than a few hundred dollars, the  
25 Court may presume that the Plaintiffs are primarily interested in injunctive relief.  
26 Furthermore, it is proper to apply the laws of 50 states to the nationwide Rule  
27 23(b)(2) fraud class. Although manageability concerns may preclude a nationwide

28 ///

1 Rule 23(b)(3) fraud class, the Ninth Circuit has held that Rule 23(b)(2) does not  
2 require a determination of manageability.

3  
4 32. Moreover, there are fewer manageability issues when the Court, rather  
5 than the jury, applies differing legal standards. The Court, rather than the jury, will  
6 apply the laws of the 50 states in this claim for injunctive relief. Similarly, there is  
7 no requirement that common issues predominate for a Rule 23(b)(2) class. It is  
8 sufficient if class members complain of a pattern or practice, as here, that is  
9 generally applicable to the class as a whole.

10  
11 **COUNT TWO**  
12 **BREACH OF EXPRESS WARRANTY**  
13 **(Nationwide Damage Class)**  
14

15 33. Plaintiffs incorporate by this reference the proceeding allegations as if  
16 fully set forth herein and, to the extent necessary, plead this cause of action in the  
17 alternative.

18  
19 34. Plaintiffs, and each member of the Class, formed a contract with the  
20 Defendants at the time Plaintiffs and the other members of the class purchased the  
21 products. The terms of that contract include the promises and affirmations of fact  
22 made by Defendants on its product labels and through its marketing campaign, as  
23 described above. This product labeling and advertising constitutes express  
24 warranties, that became part of the basis of the bargain, and is part of a standardized  
25 contract between Plaintiffs and the members of the Class on the one hand, and  
26 Defendants on the other.

27  
28 ///





1 (5) Representing that [the Products have] ...  
2 characteristics ... uses [or] benefits ... which they do not  
3 have ... .

4 \* \* \*

5 (7) Representing that the [the Products] are of a  
6 particular standard, quality or grade ... if they are of  
7 another.

8 \* \* \*

9 (9) Advertising goods ... with intent not to sell them as  
10 advertised.

11 \* \* \*

12 (16) Representing that [the Products have] been supplied  
13 in accordance with a previous representation when [they  
14 have] not.

15  
16 41. Defendants violated the Act by representing through its advertisements  
17 the products as described above when it knew, or should have known, that the  
18 representations and advertisements were unsubstantiated, false and misleading.

19  
20 42. Pursuant to § 1782 of the Act, Plaintiffs will notify the Defendants in  
21 writing by certified mail of the particular violations of § 1770 of the Act and  
22 demand that Defendants rectify the problems associated with the actions detailed  
23 above and give notice to all affected consumers of its intent to act.

24  
25 43. Pursuant to California Civil Code § 1782(d), Plaintiffs and the Sub-  
26 Class seek an order enjoining the above-described wrongful acts and practices of  
27 the Defendants and for restitution and disgorgement.

**(On Behalf Of The California Sub-Class)**

45. Plaintiffs incorporate by this reference the proceeding allegations as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

46. California Business & Professions Code § 17200 prohibits any “unfair, deceptive, untrue or misleading advertising.” For the reasons discussed above, Defendants have engaged in unfair, deceptive, untrue and misleading advertising in violation of California Business & Professions Code § 17200.

47. California Business & Professions Code § 17200 also prohibits any “unlawful ... business act or practice.” Defendants have violated § 17200’s probation against engaging in unlawful acts and practices by, *inter alia*, making the representations and omissions of material facts, as set forth more fully herein, and violating California Civil Code §§ 1572, 1573, 1709, 1710, 1711, 1770, Business & Professions Code § 17200 et seq., 21 U.S.C. § 343, and the common law.

1           48. Plaintiffs and the Sub-Class reserve the right to allege other violations  
2 of law which constitute other unlawful business acts or practices. Such conduct is  
3 ongoing and continues to this date.

4  
5           49. California Business & Professions Code § 17200 also prohibits any  
6 “unfair ... business act or practice.”

7  
8           50. Defendants’ acts, omissions, misrepresentations, practices and  
9 nondisclosures as alleged herein also constitute “unfair” business acts and practices  
10 within the meaning of Business & Professions Code § 17200 *et seq.* in that its  
11 conduct is substantially injurious to consumers, offends public policy, and is  
12 immoral, unethical, oppressive, and unscrupulous as to gravity of conduct that  
13 outweighs any alleged benefits attributable to such conduct.

14  
15           51. As stated in this Complaint, Plaintiffs allege violations of consumer  
16 protection, unfair competition and truth in advertising laws in California and other  
17 states resulting in harm to consumers. Plaintiffs assert violation of the public policy  
18 of engaging in false and misleading advertising, unfair competition and deceptive  
19 conduct towards consumers. This conduct constitutes of violations of the unfair  
20 prong of California Business & Professions Code § 17200 *et seq.*

21  
22           52. There were reasonably available alternatives to further Defendants’  
23 legitimate business interests, other than the conduct described herein.

24  
25           53. Business & Professions Code § 17200 also prohibits any “fraudulent  
26 business act or practice.”

27  
28 ///

1           54. Defendants' claims, nondisclosures and misleading statements, as  
2 more fully set forth above, were false, misleading and/or likely to deceive the  
3 consuming public within the meaning of Business & Professions Code § 17200.

4  
5           55. Defendants' conduct caused and continues to cause substantial injury  
6 to Plaintiffs and the other Sub-Class members. Plaintiff has suffered injury in fact  
7 and has lost money (purchase price) as a result of the Defendants' unfair conduct.

8  
9           56. Defendants have thus engaged in unlawful, unfair and fraudulent  
10 business acts and practices and false advertising, entitling Plaintiffs to judgment  
11 and equitable relief against Defendants as set forth in the Prayer for Relief.

12  
13           57. Additionally, pursuant to Business & Professions Code § 17203,  
14 Plaintiffs seek an order requiring Defendants to immediately cease such acts of  
15 unlawful, unfair and fraudulent business practices and requiring Defendants to  
16 engage in a corrective advertising campaign.

17  
18           58. Defendants have also committed acts of untrue and misleading  
19 advertising, as defined by Business & Professions Code § 17500, by engaging in  
20 the preceding acts and practices with the intent to induce members of the public to  
21 enter into contracts for the purchase of the Products.

22  
23           59. The acts of untrue and misleading advertising by the Defendants  
24 present a continuing threat to members of the public in that the Plaintiffs and Sub-  
25 Class members are unaware of the misrepresentations and necessarily and  
26 justifiably relied upon the representations made by the Defendants for the sale of  
27 their Products. Plaintiffs and the other members of the Sub-Class and the general  
28 public have no other adequate remedy of law.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff and members of the Class and Sub-Class request that the Court enter an order or judgment against Defendants as follows:

1. Certification of a nationwide Rule 23(b)(2) fraud Class for injunctive relief; Certification of a nationwide Rule 23(b)(3) breach of warranty Class for damages;

2. Certification of a California Rule 23(b)(3) for all other claims;

3. Awarding Plaintiff and the proposed Sub-Class members damages;

4. Awarding restitution and disgorgement of Defendants' revenues to Plaintiffs and the proposed Sub-Class members;

5. Awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful practices as set forth herein, and directing the Defendants to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendants by means of any act or practice declared by this Court to be wrongful;

6. For compensatory, general, statutory, exemplary, and any other damages legally available according to proof on certain causes of action;

7. For both pre- and post-judgment interest at the maximum allowable rate on any amounts recovered;



1           8.     For litigation costs of the proceedings herein;

2  
3           9.     Reasonable attorneys' fees and costs; and

4  
5           10.    Providing such further relief as may be just and proper.

6  
7  
8     Dated: October 28, 2009

MOWER, CARREON & DESAI, LLP  
AASHISH Y. DESAI

9  
10     By: \_\_\_\_\_

Aashish Y. Desai

11                     Attorneys for Plaintiff and the Class


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**DEMAND FOR JURY TRIAL**

Plaintiffs, the Class and the Sub-Class demand a trial by jury on all issues so triable.

Dated: October 28, 2009

MOWER, CARREON & DESAI, LLP  
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# EXHIBIT A

1 I, Michael Flores, declare as follows:

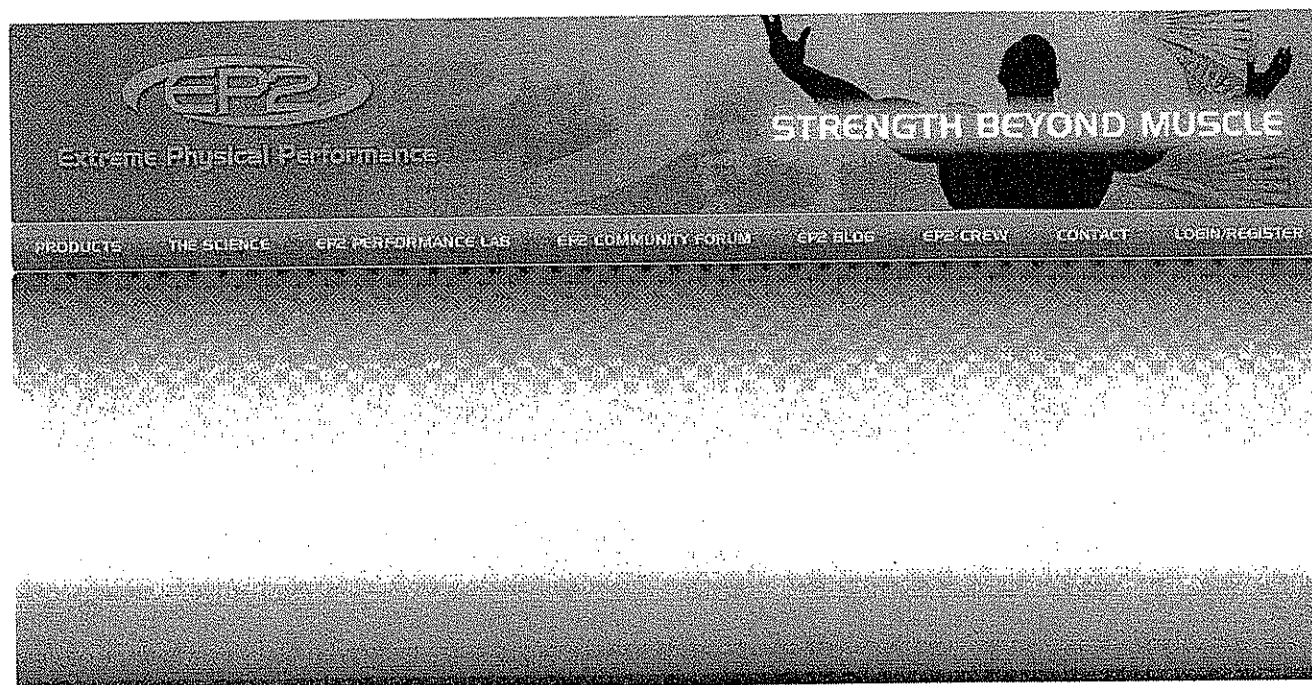
2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have  
3 personal knowledge of the facts herein and, if called as a witness, I could and would testify  
4 competently thereto.

5  
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the  
7 proper place for trial under Civil Code Section 1780(d) in that Orange County is a county in which  
8 Defendants are doing business.

9  
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
11 true and correct, and that this Declaration was executed on October 26, 2009, at San Bernardino,  
12 California.

13  
14   
15 Michael Flores  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
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27  
28

# EXHIBIT B



## WELCOME TO EP2ONLINE

We are Extreme Physical Performance (EP2) - a progressive, new sports supplement firm that delivers muscle-building formulas designed to help you make progressive advancements to your physique. At EP2, we understand that over-hyped claims and misleading messages have plagued our industry, leaving consumers scratching their heads wondering why the products they buy fail to deliver the results they expect. Well at EP2, our mission is to develop sport supplements that are deeply rooted in science, are clinically proven and university tested to be safe and extremely effective. We are unique! We are EP2!

The **FREE RIDE SPECIAL**: Buy two or more boxes of **MUSCLEPUMP™** and get shipping and handling free! For a **LIMITED TIME** available on all other EP2 products (excluding samples, stacks and non supplement items)



[Place an order](#) (\*promocode "freeshipping")



The **STAN MCQUAY STRENGTH SPECIAL**: Buy 3 boxes of **MUSCLEGROWTH™** and get a 4th free! This constitutes a full 8 week cycle.

[Place an order](#) (\*prom code "b3gel4free")

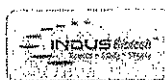
The **RAPID CUT SPECIAL**: Buy 2 boxes of **ANABEUTROL™** and get a 3rd one at 50% off



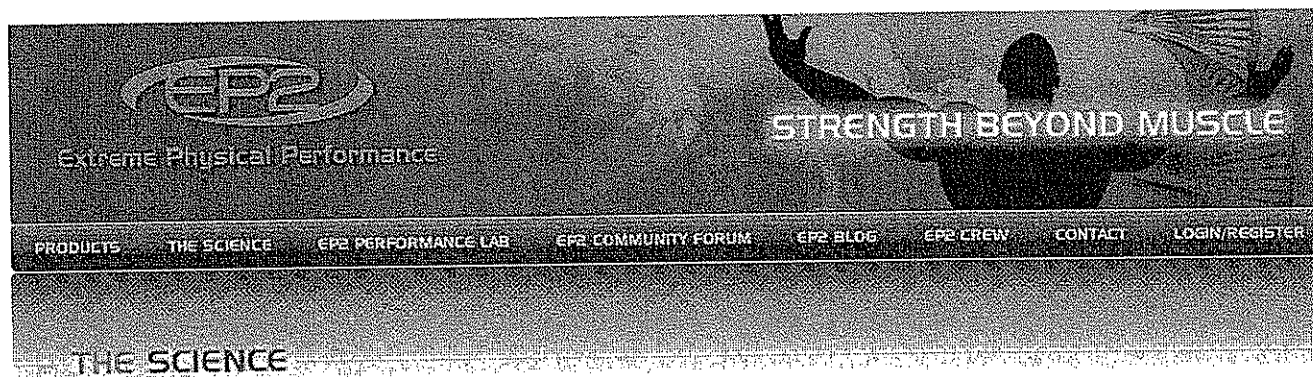
[Place an order](#) (\*promo code "rapidspecial2b350")

## TESTED AND TRUE. EP2 DELIVERS RESULTS

EP2's botanically-active ingredients are subject to the highest level of assay analysis and supported by toxicology, pre-clinical and clinical research. The ingredients are manufactured in facilities which are ISO9001 certified and cGMP compliant (Current Good Manufacturing Practices). Each ingredient is tested for active markers and assays by validated HPLC techniques. Reference standards for active markers are validated by NMR (Nuclear Magnetic Resonance) and LC-MS (Liquid Chromatography-Mass Spectrometry). Every ingredient lot produced is tested for purity and potency ensuring consistent quality every time. [\[ read more \]](#)







#### EP2 - INNOVATION DRIVEN....SCIENCE VERIFIED!

Extreme Physical Performance (EP2) has joined forces with Indus Biotech, a progressive drug-discovery company. Our partnership has allowed us to develop proprietary technology that isolates, purifies, and stabilizes pharmaceutically-active components from botanical sources for the sport nutrition market. The result is the discovery of new novel bioactive ingredients and extracts never before seen in sports supplements. Our products cannot be duplicated or knocked-off because the extraction of these newly discovered compounds are highly regulated and protected through our patents.



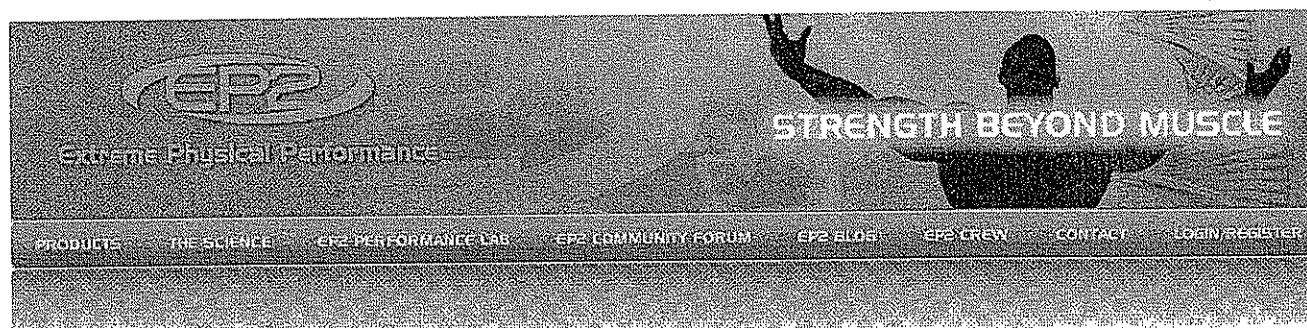
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We at EP2 are dedicated to continually investigate the role of nutritional supplementation through clinical research with the goal of pushing the limits of human performance beyond normal and unlocking the secrets for serious muscle growth. For that reason, EP2 employs a team of experienced researcher and scientific professionals to develop specialized protocols for the clinical evaluation of our products. In a collaborative partnership with the Human Performance Laboratory at the University of Mary Hardin-Baylor, we are able to evaluate our products to support the claims we make. We go above and beyond basic supplement research practices by testing our actual product and not just a 'key ingredient' in a specific blend. EP2 invests significant amounts of money and resources in developing such models to ensure the development of genuine, novel products with real results!

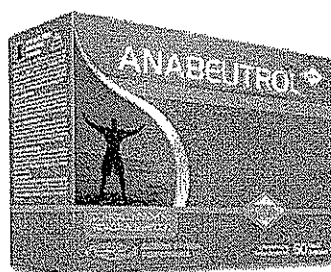
Not only are we at the forefront of the industry by clinically researching our unique formulas, we at EP2 are dedicated to educating consumers about the scientific evidence as it relates to sports supplements. We take every effort to provide you the consumer information to help you understand our products and how to use them efficiently in order to reach your goals. Whether you're new to the gym or a seasoned veteran bodybuilder, EP2 is here to teach and help you make continual advancements to your physique.

EP2's goal is to become an industry leader specializing in the development of true revolutionary products from unique proprietary patent-pending bioactive compounds with clinically-researched results. We are confident that our products will change the way bodybuilders and serious strength-training athletes approach their performance goals. Our products are the most exclusive and scientifically-evaluated products ever produced. When used properly, they will produce significant gains in even the hardest gainer. EP2 is committed to delivering products that are deeply rooted in science for decades to come.

# EXHIBIT C



## EP2 PRODUCTS - ANABEUTROL™



Price: \$69.90  
60 Capsules (1 Month Supply)

**ORDER NOW**

**GNC Live Well**

Store Locator

[USA](#)

[Canada](#)

### ANABEUTROL™

[Select another product](#)

ANABEUTROL™'s exclusive powerful proprietary, patent-pending ingredient TORABOLIC™, developed by the Botanical Drug Discovery company Indus Biotech, has lead to the creation of 'World's First Clinically Proven Anabolic Fat Lost Product' ever seen in the industry!

With each serving of ANABEUTROL™ 600mg of TORABOLIC™ (the proprietary bioactive compound from Extreme Physical Performance) is rapidly delivered via liquid capsule technology. The pharmaceutical-grade liquid capsule technology in ANABEUTROL™ ensures both rapid delivery of the bioactive ingredient and accurate dosing.

ANABEUTROL™ then triggers powerful receptor-activation in the muscles leading to a cascade of events that stimulate muscle cell growth, cell differentiation, and fat metabolism. First, ANABEUTROL™ works to activate PPAR (peroxisome proliferators-activated receptor) in the muscles, which are part of the nuclear receptor protein family. By stimulating these specific PPARs, ANABEUTROL™ works to increase the power of your oxidative muscle fibers, forcing an increase in strength. Second, because your PPAR receptors also function as your body's fatty acid sensors, ANABEUTROL™ triggers the genetic signal controlling fat breakdown, leading to smaller fat cells and an increase in fat burning.

What does this mean to you, the serious bodybuilder? Essentially, ANABEUTROL™ is targeting specific muscle energetic pathways and chemically activating growth receptors, which can unleash unprecedented muscle gain, strength increase and fat loss. Take full advantage of every workout and choose ANABEUTROL™. The powerful science behind Extreme Physical Performance and ANABEUTROL™ will put you one step closer to your best body today.

### Key Features

- 'Best in Class' Supplement for burning fat while preserving lean muscle!
- Only product on the market that contains the exclusive ingredient TORABOLIC
- No hormonal side-effects
- Published Clinical Study (University of Mary Hardin-Baylor)
- Stackable with all EP2 products
- 1-Month Supply
- GREEN-MUSCLEBUILDING Supplement

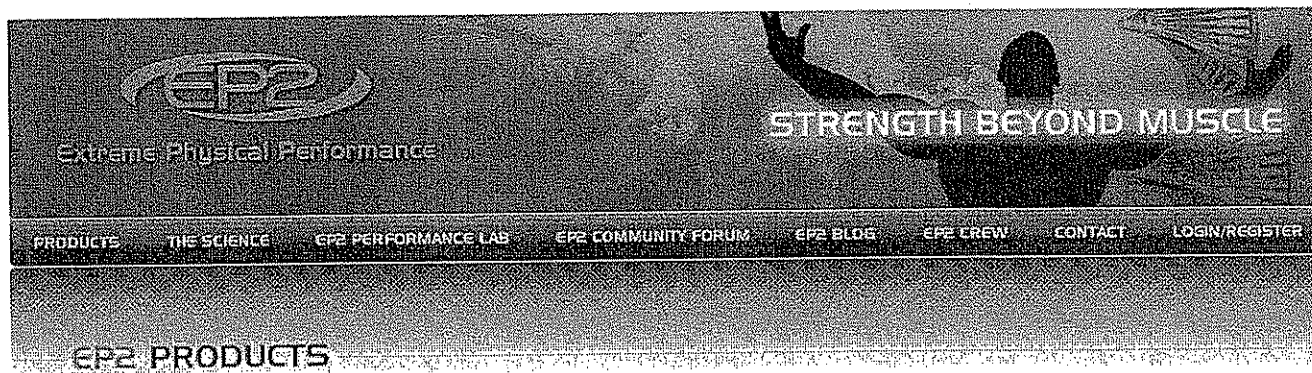
### Benefits

- Scientifically proven to help you lose fat and build muscle
- Lose up to 6X more fat in only 8 weeks
- Add 388% more muscle
- 100% increase in strength
- Clinically Proven

*Directions: On training days take 2 capsules 1-2 hours before training. On non-training days take 2 capsules in the morning.*

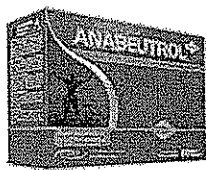
Graph: Anabeutrol's effect on strength and effect on fat loss  
Journal of the International Society of Sports Nutrition





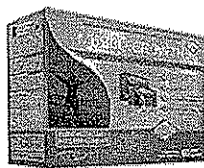
#### ANDRITEST™

Never before has an all-natural, drug-free, musclebuilding agent been developed that is clinically-proven to jack testosterone levels faster than new ANDRITEST™.



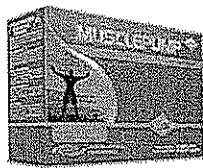
#### ANABEUTROL™

The pharmaceutical-grade liquid capsule technology in ANABEUTROL™ ensures both rapid delivery of the bioactive ingredient and accurate dosing.



#### MUSCLEGROWTH™

Two of bodybuilding's most powerful bio-active compounds together to forge one all-encompassing, muscle-hypertrophic event – MUSCLEGROWTH™. The combined science of new ANABEUTROL™ and ANDRITEST™.



#### MUSCLEPUMP™

With new MUSCLEPUMPTM, EP2 delivers the first scientific advancement to Nitric Oxide (NO) pump products in years. Only MUSCLEPUMP™ includes the next-generation NO compound HYPEROX™.



#### MUSCLEGTROPIN™

EP2's 'Best in Class' Muscle-Building Protein engineered as an 'Extreme Performance Anabolic Protein Formula'; contains synergistic ingredients necessary for creating an anabolic growth environment for building lean dense muscle and preventing muscle breakdown.

# EXHIBIT D

Sign up and Save 15% ▶

**GNC Live Well.**VITAMINS &  
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PROTEIN

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& DIGESTIONSUPER FOODS  
& GREENS

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& BODYEQUIPMENT &  
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## We're committed to exceeding your expectations

GNC sets the standard in the nutritional supplement industry by demanding truth in labeling, ingredient safety and product potency, all while remaining on the cutting-edge of nutritional science. As our company has grown over the years, so has our commitment to Living Well. In fact, GNC is the world's largest company of its kind devoted exclusively to helping its customers improve the quality of their lives.

From scientific research and new product discovery to the manufacturing and packaging processes, GNC takes pride in our rigorous approach to ensuring quality. Our commitment to quality extends to our interactions with you in our stores and after you buy our products.

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## Key Contacts

GNC Corporation

412-268-4600

more &gt;

## Latest Features

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ViraBLOC®  
Oct 06, 2009

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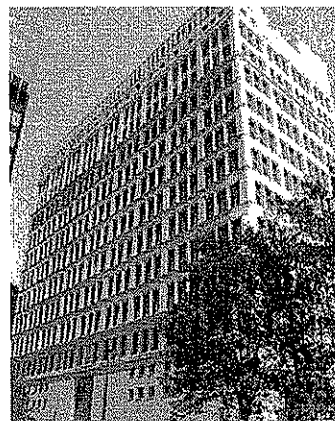
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## Company Overview

GNC: Quality you can trust | The shopping experience | Company history: Our roots were firmly planted in good health

GNC, headquartered in Pittsburgh, Pa., is the largest global specialty retailer of nutritional products; including vitamin, mineral, herbal and other specialty supplements and sports nutrition, diet and energy products. GNC has more than 4,800 retail locations throughout the United States (including more than 1,000 franchise and 1,200 Rite Aid store-within-a-store locations) and franchise operations in 48 international markets. The company – which is dedicated to helping consumers Live Well – also offers products and product information at [www.gnc.com](http://www.gnc.com).



## Key Contacts

GNC Corporation

412-288-4600

more &gt;

## Latest Features

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Oct 06, 2009

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